

remainder, for that could not be, the mother being then living, and an allegation that he was seized would have been untrue in point of fact. The complainant then having, in my opinion, made by his bill a case entitling him to the aid of this Court, and all the allegations of the bill being admitted by the defendants who have answered, and to be taken as confessed by the non-resident defendants, against whom an order of publication passed and has been duly published, it remains to be seen whether there is anything in the matters in avoidance set up in the answer which can be successfully relied upon.

These matters are, first, that Edward Parks, in the year 1841, executed a good and valid conveyance of the land in question to his brother, Whittington Parks, for a valuable consideration, and hence it is insisted that Edward has no title to that portion of said land, which descended to him as one of the heirs of his said brother. This deed was not recorded, is not produced, and is stated in the answer to have passed, upon the death of Whittington, into the hands of the complainant, Thomas Robertson, and by the evidence it appears to have been executed and delivered to Whittington Parks, in the year 1839, and not in 1841, as stated in the answer. The defendants, supposing they had laid a sufficient foundation for the purpose, have offered parol evidence to prove the contents of this deed. This evidence is excepted to by the complainant, and, in my judgment, it is quite clear that the exception is well taken, and the evidence must be excluded. The deed, as appears by the answer, passed upon the death of Whittington Parks into the hands of the complainant, Thomas Robertson, and must be presumed to be in the hands of the present complainant, his executor, and, according to the well-established rule upon the subject, evidence of the contents of the deed cannot be offered without giving notice to the complainant to produce it. *Kennedy vs. Fowke*, 5 H. & J., 63. No such notice has been given in this case, and, therefore, without stopping to examine into the sufficiency of the evidence, if admissible, to prove the contents of the deed, I deem it enough to say that it is wholly inadmissible.